93-709

Case No.

Supreme Court, U.S.
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In The Supreme Court
OF THE
United States

OCTOBER TERM, 1993

G.I. TRUCKING COMPANY,
Appellant/Petitioner,

VS.

INSURANCE COMPANY OF NORTH AMERICA,
Appellee/Respondent.

U.S. Court of Appeal/
9th Cir. No. 92-15234
U.S.D.C. No. CV-91-02631-TEH

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Question For Review:

Does a subrogated insurer's letter which is filed within nine months, identifies the shipment and goods in question, contains an assertion of the common carrier's liability and sets forth an estimated amount of the claim, satisfy the claims filing requirements of the Interstate Commerce Commission, 49 C.F.R. section 1005.2?

Parties

Plaintiff/Appellant before the Ninth Circuit Court of Appeals and Respondent herein: Insurance Company of North America. Insurance Company of North America ("INA") is a corporation with its principal place of business in Philadelphia, Pennsylvania. Pursuant to Supreme Court Rule 29.1, INA states that its parent corporation is INA Financial Corporation. INA has no subsidiaries which have issued stock to the public. INA has the following affiliate which has issued stock to the public: CIGNA Corporation.

Defendant/Respondent before the Ninth Circuit Court of Appeals and Petitioner herein: G.I. Trucking Company.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Respondent Insurance Company of North America ("INA") respectfully requests that this Court deny the Petition of G.I. Trucking Company ("G.I. Trucking") for the issuance of a Writ of Certiorari to review the opinion of the United States Court of Appeals for the Ninth Circuit, filed August 2, 1993.

Opinions Delivered In The Case

G.I. Trucking's Petition for Writ of Certiorari seeks review of a decision of the United States Court of Appeals filed on August 2, 1993 in Case No. 91-15234. The Ninth Circuit's opinion is

designated for publication in the official reporter at 1 F.3d 903 (9th Cir. 1993). The Ninth Circuit opinion reversed the decision of the United States District Court for the Northern District of California, published at 783 F.Supp. 1251 (N.D. Cal. 1991). These opinions are attached to the Petition as Exhibits 1 and 2, respectively.

Jurisdiction

Respondent INA agrees with the jurisdictional statement provided on page 2 of G.I. Trucking's Petition for Writ of Certiorari.

Statement of the Case

This case concerns the application of the regulations of the Interstate Commerce Commission ("ICC") to a claim arising from a carrier's negligence in transporting products manufactured by INA's insured, Eye Technology, Inc. The damaged products, intraocular lenses, were ultimately to be delivered in Mexico, thus vesting the ICC with jurisdiction over the shipment. The goods were transported by Petitioner G.I. Trucking.

The issue raised by G.I. Trucking's petition herein is whether a written notice provided by INA's subrogation unit, Recovery Services, Inc., to G.I. Trucking following discovery of the damage satisfies the "claim" requirements of the ICC's regulations. Under the insurance policy issued to Eye Technology, INA insured the damage to the intraocular lenses, which was discovered on or about April 18, 1988 and was caused by moisture contamination in transit.

On December 2, 1993, an employee of Recovery Services, Inc. wrote G.I. Trucking, noting:

> We are the Subrogation Dept. for the Insurance Co. of North America: The Insurer of Eye Technology, Inc.
>
> This letter is our preliminary notice of loss/damage to the shipment of lenses in the amount of $100,000 (Estimate). Please note that we have not yet paid this claim to our insured; as soon as we will make payment

to them we will send the final claim bill to you. We are enclosing herewith supporting documents pertaining to the above file for your record.

Hoping to receive your acknowledgement soon.

Yours very truly,

Uma Desai
R.S.I.

On March 27, 1989, Recovery Services, Inc. forwarded to Petitioner a form entitled "Standard Form for Presentation of Loss, " seeking the recovery of $100,000 for the damage caused to the insured's products. On April 4, 1989, G.I. Trucking denied responsibility for payment of the claim. Following an exchange of correspondence between the parties, Respondent filed suit in the Superior Court of the State of California, for the City and County of San Francisco. Petitioner thereafter removed the action to the United States District Court for the Northern District of California, where it was assigned Case No. CV-91-02631-TEH.

G.I. Trucking moved for summary judgment in the trial court, on the basis that a "claim" had not been presented within nine months, as required by 49 C.F.R. section 1005.2(b)(3). Specifically, Petitioner asserted that the December 2, 1988 letter from Ms. Desai set forth only an "estimate" and not a specified or determinable amount as required by the ICC's regulations. Although INA opposed the motion on the basis that its letter of December 2, 1988 was a "claim" as contemplated by the ICC regulations, the motion for summary judgment was granted in a December 31, 1991 order by the Honorable Thelton E. Henderson. (Petitioner's Exh. 2, B-1 to B-16.)

The Ninth Circuit Court of Appeals thereafter reversed Judge Henderson's order of summary judgment. (Petitioner's Exh. 1, A-1 to A-9.) The Court of Appeals reasoned that written claims are to be literally construed and that the form of the notice is less important than "its adequacy in apprising the carrier of the basis for the claim and of the fact that reimbursement will be sought." (Petitioner's Exh. 1, A-7, citing *Taisho Marine & Fire Ins. Co., Inc. v. Vessel Gladiolus,* 762 F.2d 1364, 1368 (9th Cir. 1985).) The Court therefore concluded that Respondent's December 2,

1988 letter satisfied the ICC regulations because there was "a written notice of damage and a clearly communicated intent to hold G.I. liable." (Petitioner's Exh. 1, A-7.) The Court of Appeals also observed that G.I. Trucking had actually investigated the claim after the December 2, 1988 notice, thus satisfying the principal purpose of the claims regulations. (Petitioner's Exh. 1, A-7 to A-8.) The Court also noted that the December 2 letter might satisfy the requirements of the ICC regulations even as strictly applied. (Petitioner's Exh. 1, A-8.)

Argument Why The Writ Should Not Issue

The Court of Appeals' decision is fully consistent with the ICC regulations as interpreted by that agency itself. The ICC recognizes that: (1) the primary purpose of the claims regulations is to facilitate investigation of the claim by the carrier, and (2) no precise dollar amount of the claim is necessary within the nine month period to facilitate such an investigation.

In fact, following promulgation of the claim regulations codified in 49 C.F.R. 1005(b), the ICC addressed the very issue before this Court. In an April 18, 1972 appendix to its second order, the ICC set forth "22 Questions and Answers" concerning the application of the regulations to specific factual situations. *Federal Register,* April 13-18, 1972. (Appendix, Exh. A.) Questions 1 and 2, and the ICC's answers thereto, were as follows:

> 1. *Question.* Do the provisions of Section 1005.2(b) and (d), when taken together, preclude the payment of a claim by a carrier when a claim is filed within nine months for $100 more or less, even though the exact amount of the claim cannot be determined until after the nine month period has lapsed?
>
> *Answer:* No. If the claim is filed with the carrier within nine months ... and the shipment involved is identified by the claimant seeking damages, payment is not barred by the fact that the specified amount claimed cannot be determined within the nine month period. The carrier must investigate the claim. It may not, however, voluntarily pay the claim until such time

as the amount of money due the claimant is specified and determinable.

2. *Question.* Does the filing of a claim for an uncertain amount toll the nine month period for filing claims provided in Section 2(b) of the Uniform Bill of Lading Contract?

Answer. It is not uncommon for shippers to file a claim for an unspecified amount in order to avoid having their claims barred by the limitations provisions of the Uniform Bill of Lading. A notice of an intention to file a claim and a claim itself are distinguishable mainly by their form and content. The courts have never prescribed or recognized any particular form that a claim must take. Moreover, the Supreme Court of the United States has emphasized that the written notice of a claim requirement must be given a reasonable and practical construction. That construction must be adapted to the circumstances of each particular case under consideration. The Supreme Court has also said that the requirement for filing a claim in writing is "addressed to a practical exigency and is to be construed in a practical way." Therefore, what constitutes a properly written claim, timely filed, is and will continue to be essentially a question of fact. (Appendix, Exh. A, p.2.)

The Court of Appeals' decision in this case follows the ICC's own directives that each claim is to be considered on its specific facts and, therefore, the failure to specify a sum certain within the nine month period does not necessarily preclude recovery by the claimant.

While other courts have adopted stricter interpretations of the ICC claims requirements in specific situations, there is no conflict between the circuits supporting the petition herein. The three decisions cited by Petitioner for the existence of a conflict are: *Nedlloyd Lines, B.V. Corp. v. Harris Transport Co., Inc.*, 922 F.2d 905, 908-909 (1st Cir. 1991), *Pathway Bellows, Inc. v. Blanchette*, 630 F.2d 900, 903 (2nd Cir. 1980), *cert. den.* 450 U.S. 915 (1981) and *Salzstein v. Bekins Van Lines, Inc.*, 993 F.2d F.2d

1187 (5th Cir. 1993). These decisions can be reconciled, however, with the decision of the Ninth Circuit in this case.

The first decision, *Nedlloyd Lines, B.V. Corp. v. Harris Transport Co., Inc.*, supra, was erroneously referenced by the Ninth Circuit here as pertaining to the disposition of claims for loss or damage. *Nedlloyd*, however, involved a claim for freight charges incurred for the transportation of an overweight portion of a load removed from a trailer due to an inadequate overweight permit. Since damage. loss or delay to cargo or baggage was not involved, 49 C.F.R. section 1005.2 should not have been applicable to such a claim in the first instance and *Nedlloyd* therefore has no legal significance.

Pathway Bellows, Inc. v. Blanchette, supra, involved a loss and damage claim received one day later than the statutorily imposed nine month limit. The Second Circuit properly concluded in *Pathway Bellows* that the claim was untimely. 630 F.2d at 904-905. In the *Pathway Bellows* case, the only document sent by the shipper within the nine month period expressly indicated that it was not a "claim" and that the shipper was "in the process of filing a claim" for transit damage. 630 F.2d at 901. The decision of the Second Circuit therefore does not conflict with the Court of Appeals' opinion herein.

The decision in *Salzstein v. Bekins Van Lines, Inc., supra,* also does not support G.I. Trucking's petition. In *Salzstein*, no amount of loss was ever shown on the claims forms provided by the claimant, despite the carrier's repeated requests that such information be provided. 993 F.2d at 1191-1192. *Salzstein* should therefore stand only for the principle that a claim is not cognizable under the ICC regulations if it never states an amount of loss. Here, in contrast, INA's letter to Petitioner set forth an estimated amount of loss within the nine month period.

Finally, it must be observed that none of the decisions referred to above require that, in all circumstances, claims be perfected within nine months under the ICC regulations. To the contrary, many of the decisions have recognized exceptions, such as whether the claimant exercised "due diligence" to notify the carrier of the exact amount of the loss within nine months of its

occurrence. *See Nedlloyd Lines v. Harris Transport Co., Inc., supra,* 922 F.2d at 909; *Pathway Bellows, Inc. v. Blanchette, supra,* 630 F.2d 900, 905 (2nd Cir. 1980). The only decision purporting to create a stricter rule is *Bobst Div. of Bobst Champlain, Inc. v. IML-Freight, Inc.*, 566 F.Supp. 665, 669 (S.D.N.Y. 1983). *Bobst*, is a district court decision and does not create the conflict between the circuits which is a prerequisite to the granting of G.I. Trucking's petition.

The Ninth Circuit correctly followed this Court's observations that the satisfaction of a shipper's notice to a carrier "does not require documents in a particular form" and "is to be construed in a practical way." *Georgia, F. & A. R. Co. v. Blish Milling Co., 241 U.S. 190, 198, 36 S.Ct. 541, 60 L.Ed. 948 (1916)*. The Court of Appeals's decision is not in conflict with the decisions of other circuits, and the petition should therefore be denied.

Conclusion

For the reasons set forth above, Respondent requests that the Petition for Writ of Certiorari be denied by the Court.

Respectfully submitted,

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APPENDIX

A. Order of the Interstate Commerce Commission, April 18, 1972 ..... A-1

APPENDIX

22 QUESTIONS AND ANSWERS IN APRIL 18, 1972 ORDER, EX PARTE 263

Service Date
April 18, 1972

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 13th day of April, 1972.

EX PARTE NO. 263

RULES, REGULATIONS, AND PRACTICES OF REGULATED CARRIERS WITH RESPECT TO THE PROCESSING OF LOSS AND DAMAGE CLAIMS

Upon consideration of the record in the above-entitled proceeding, including our report and order at 340 I.C.C. 515, and of:

(1) Joint Petition of Missouri Pacific Railroad Company, the Texas and Pacific Railway Company, and Chicago & Eastern Illinois Railroad, respondents, filed March 23, 1972, for reconsideration;

(2) Petition of Missouri-Kansas-Texas Railroad Company, respondent, filed March 27, 1972, for reconsideration;

(3) Petition of the Association of American Railroads, on behalf of its members (except respondent in (2) above), filed March 27, 1972, for reconsideration.

It appearing, That full and effective implementation by all segments of the carrier industry subject to our jurisdiction of the regulations prescribed in this proceeding generally requires a delay in the effective date of those regulations until July 1, 1972, but that the carriers are urged to bring their claims-processing practices into compliance with those regulations at the earliest possible opportunity prior to that date;

It further appearing, That other than granting additional time within which respondents must comply with the regulations set forth in Appendix E to the report and order served herein on February 24, 1972, no need has been shown further to consider the pleadings or grant the relief prayed therein;

It further appearing, That in their argument urging reconsideration, petitioners in (2) and (3) above, raise several questions of general interest as to the meaning of the new regulations; that inasmuch as these questions involve matters of concern not only to the parties to this proceeding but also to the public at large they should be answered; and that in view of their importance and widespread effect these questions have been extracted from the pleadings and appropriate answers thereto are set forth in the appendix to this order; and good cause appearing therefor;

It is ordered, That the petitions in (1), (2) and (3) above be, and they are hereby, denied, for the reasons that no sufficient or proper cause appears for reconsidering the order of February 3, 1972, served February 24, 1972.

It is further ordered, That the effective date of the rules prescribed in the order entered herein on February 2, 1972, be, and it is hereby, postponed to July 1, 1972, and that such rules will apply on all claims for loss, damage or delay in transit to property moving in interstate or foreign commerce received by carrier or freight forwarder respondents hereto on and after the said effective date.

By the Commission.

(SEAL)

ROBERT L. OSWALD
Secretary

SECTION 1005.2

1. *Question.* Do the provisions of sections 1005.2(b) and (d), when taken together, preclude the payment of a claim by a carrier when a claim is filed within 9 months for "$100 more or less," even though the exact amount of the claim cannot be determined until after the 9-month period has elapsed?

Answer. No. If a claim is filed with a carrier within 9 months, or any other period of longer duration that the carrier may establish for filing of claims, and the shipment involved is identified by the claimant seeking damages, payment is not barred by the fact that the specific amount claimed cannot be determined within the 9-month period. The carrier must investigate the claim. It may not, however, voluntarily pay the claim until such time as the amount of money due the claimant is specified or determinable.

2. *Question.* Does the filing of a claim for an uncertain amount toll the 9-month period for filing claims provided in section 2(b) of the uniform bill of lading contract?

Answer. It is not uncommon for shippers to file a claim for an unspecified amount in order to avoid having their claims barred by the limitations provisions of the bill of lading. A notice of an intention to file a claim and a bona fide claim itself are distinguishable mainly by their form and content. The courts have never prescribed or recognized any particular form that a claim must take. Moreover, the Supreme Court of the United States has emphasized that the written notice of a claim requirement must be given a reasonable and practical construction. That construction must be adapted to the circumstances of each particular case under consideration. The Supreme Court also has said that the requirement for filing a claim in writing is "addressed to a practical exigency and it is to be construed in a practical way." Therefore, what constitutes a properly written claim, timely filed, is and will continue to be essentially a question of fact.

SECTION 1005.3

3. *Question.* May a carrier acknowledge receipt of a cargo loss and damage claim without having first made a preliminary examination of the documents submitted in support thereof by the claimant?

Answer. No. The regulations require a carrier to make a preliminary examination of the claim and the documents submitted in support thereof. The carrier must then indicate in its acknowledgment to the claimant what, if any, further documentation may be required for it further to process the claim.

4. *Question.* Is it necessary that the carrier note the claim file number on all documents filed in support of a claim and all records and correspondence with respect thereto, or is it sufficient for purposes of compliance for the carrier simply to note the claim file number on a file jacket and place therein all documents necessary to the disposition of the claim?

Answer. The claim file number must be noted on all documents, records, and correspondence pertaining to the claim, including the shipping order and delivery receipt if they are in the carrier's possession.

5. *Question.* Do the provisions of section 1005.3 require carriers to purge their general claim records, match records taken therefrom to individual claims, and number all documents and records with respect thereto prior to setting up a claim file and acknowledging receipt of the claim?

Answer. No. This section requires carriers to *create* a separate file for each claim, assign a successive number thereto, and note that number on all documents filed in support thereof. Acknowledging receipt of a claim should not be delayed pending the compilation of the complete claim file.

6. *Question.* Why is it necessary to note the claim file number on the shipping order and delivery receipt when those documents are in the carrier's possession?

Answer. When a carrier is the originating or destination carrier, or both, it is essential to the proper investigation of a

claim, that these documents be examined to determine the condition of the shipment at origin and destination in order to determine carrier liability. Noting the claim file number on those documents not only establishes that they have been checked in processing the claim, but it also provides additional assurance to the carrier that a duplicate claim on the same shipment will not inadvertently be paid in the future.

SECTION 1005.4

7. *Question.* Do the provisions of section 1005.4(b), pertaining to documents in support of claims prohibit (1) the practice of filing with carriers "bonds of indemnity" in lieu of original bills of lading as supporting documents for cargo claims, and (2) the use of photographic reproductions of bills of lading in lieu of the original bills?

Answer. This Commission has not ordered the discontinuance of the use of bonds of indemnity or photographic reproductions in lieu of original bills of lading. The first phrase of the regulation, "When a necessary part of an investigation" is indicative of the fact that the regulations do not *require* the original document to be filed in all instances. If, however, the original document is necessary to the proper disposition of a claim, it must be produced by the claimant, or at least examined by the carrier in order to verify controlling facts evidenced by the bill.

8. *Question.* Do the provisions of section 1005.4(c), pertaining to the verification of certain losses, mean that a shipper absolutely cannot have a cargo claim paid by a carrier absent a certified statement from the consignee of the shipment that the property involved has not been received from any other source?

Answer. No. The underlying purpose of all of the regulations is to motivate fact-finding efforts and to encourage, as much as regulations can, responsible claim-prevention as well as claim-processing practices. Section 1005.4(c) should induce the fullest practicable investigation of all shortage claims. This Commission is aware, however, that a shipper-claimant and a carrier may encounter difficulty in concluding certain claims because a consignee whom they cannot control may prove to be uncooperative

and decline to execute the document. When such circumstances are clearly established in the processing of a claim, the regulation should not be construed to require the performance of an impossible act. Inasmuch as section 1005.4(c) is largely an adaptation of a practice recommended by the Freight Claim Division of the Association of American Railroads for processing shortage claims in excess of $100, it should be given practical effect.

SECTION 1005.5

9. *Question.* Is a carrier now required to pay all cargo claims filed with it?

Answer. No. The provisions of section 20(11) of the Interstate Commerce Act and sections 190-196 of the Harter Act have not been affected by this Commission's promulgation of regulations to govern the processing of cargo claims. Carrier liability is determined by the facts and applicable law in each case and the provisions of section 1005.5 should not be construed as requiring payment in all instances.

10. *Question.* Is a destination carrier in a joint-line haul required by the new regulations to bear the full responsibility of a claim for concealed damage that clearly occurred in transportation but which cannot be attributed solely to one carrier?

Answer. No. Nothing in this Commission's regulations or its decision prohibits carriers from apportioning concealed damage claims where it has been reasonably shown by the claimant that the damage for which claim is made occurred while the shipment was in transit. The decision prohibits, however, the arbitrary application of percentages and other formulae by which carrier liability to a shipper or receiver is reduced. The decision also discourages the arbitrary sharing by carriers participating in the transportation of damages which are not likely to have been caused by each of the participating carriers.

11. *Question.* May a carrier disallow a claim until the supporting documents required under the regulations are contained in the claim file?

Answer. The answer to this question really depends upon the meaning of the word "disallow." a carrier may not pay a claim until such time as it is fully and properly supported. The regulation should not be construed, however, to mean that a given claim should be declined or returned when it is filed simply because certain of the required supporting documents have not been supplied or are not in the file.

12. *Question.* What reasons will permit a carrier to close a file and what reasons will exempt it from issuing the 120-day and 60-day notification to the claimant?

Answer. A carrier may close its file on a claim at any time after the claim has been paid in full or declined or the carrier and the claimant have mutually agreed to a fair compromise settlement which has been accomplished. A notification to the claimant of the status of his claim and the reason for its not having been concluded prior thereto must be given on all claims that remain open at the expiration of 120 days and at the expiration of each succeeding 60-day period. No exemptions from the notice requirements are provided in the regulations. So long as the claim remains open or pending in the carrier's records, the notice requirements apply.

13. *Question.* Are carriers now forbidden to prorate damages among those participating in a joint-line haul when processing and settling cargo claims?

Answer. No. This Commission found that when carriers enter into agreements to prorate cargo claims damages for which they *clearly* are *not* responsible, they violate the letter and spirit of sections 20(11) and 20(12) of the Interstate Commerce Act. This finding, however, should not be construed to mean that all arrangements are unlawful *per se.* Essentially, it means that a carrier may not lawfully prorate damages with other carriers for which it alone is *clearly and fully* responsible. Nor may such carrier participate with another carrier by paying a portion of the damages on a claim for which it is clearly and fully *not* responsible. Whenever liability cannot clearly be determined as among participating carriers, and it is nevertheless established that the loss or damage occurred while the property was in transit, the

decision does not prohibit participating carriers from agreeing fairly to prorate damages. Under those circumstances, however, carriers must publish their practices in their tariffs filed with this Commission. Agreements of this type also must be filed with this Commission.

14. *Question.* Are regulated carriers now subject to fines for paying concealed damage claims?

Answer. The regulation adopted in the *Claims* decision must be obeyed, and any carrier found to be in violation thereof will be subject to the imposition of fines and other penalties pursuant to the applicable provisions of the Interstate Commerce Act and the Elkins Act. The mere payment of a concealed damage claim, standing alone, will in no instance expose a carrier to a possible fine. There must be evidence that a violation of the law or the regulations has occurred. Evidence of such violations might, for example, show that a carrier has paid a claim where liability has not reasonably been established.

15. *Question.* If a TOPC (piggyback) shipment is accepted by a carrier and a standard bill of lading is issued therefor, is the liability of the carrier issuing the bill the same as that for any other shipment subject to the Interstate Commerce Act and the terms of the bill of lading contract?

Answer. Yes. There is no distinction provided in section 20(11) of the act, which defines carrier liability, between shipments moving wholly by one mode of transport and intermodal shipments. Under section 20(11) of the statute, the carrier issuing a receipt or bill of lading for a shipment is liable for the full actual value thereof if it is lost or damaged while in the custody of the carrier. Furthermore, the carrier issuing the receipt or bill of lading is responsible to a bona fide claimant even if the loss or damage occurs on the line of another carrier.

16. *Question.* May a cargo claim for concealed damage, which has been previously settled on a prorated basis under a carrier rule found to be unlawful, now be reviewed for the purpose of obtaining recourse with full payment if damage is established as carrier inflicted?

Answer. Yes. The *Claims* decision declared that carrier rules limiting their claims liability violate section 20(11) of the act. Where carrier-inflicted damage has occurred and liability for a claim has been reduced to less than the full actual loss, damage, or injury to the goods involved, the carrier is responsible for the difference between the full value and the amount paid unless the amount conforms to the carrier's maximum liability under a released rate approved in an order of this Commission. Claimants may seek to recover any balance due them, but any conclusive determination of this question must be by a court of competent jurisdiction under the law as it now exists. A court may find relevant to this determination, the questions as to whether a claimant has or has not voluntarily amended his claim or agreed to the compromise settlement thereof and whether it has or has not executed a release endorsement of a settlement check issued by the carrier.

SECTION 1005.6

17. *Question.* If a carrier has no intention of paying a claim, should it not refuse to pick up the salvage and advise the consignee at the time of its declared non-liability?

Answer. Yes. A carrier that has no intention of paying a claim should refuse to pick up damaged property for the purpose of salvaging it. Otherwise its conduct may induce the claimant to act in a manner that would not be in his best interests. Because a carrier has no right to salvage property unless it intends to pay the claim, it should be careful not to mislead a claimant into expecting payment if that is not the carrier's intention at the time.

18. *Question.* May a carrier pick up and take possession of damaged goods, disposing of them as salvage and offer the proceeds to the claimant if he has no intention of paying the claim from the moment the shipment was tendered for transportation?

Answer. Under the provisions of section 1005.6 the carrier must, if it disposes of salvage property, do so only in a manner that will fairly protect the rights of all parties with an interest therein. The carrier must also maintain certain records on salvage and salvage proceeds, including identifying salvage lot numbers

which must be noted in related cargo claims files. In a purely technical sense, the new salvage regulation does not apply when a shipment has been delivered without exception by the carrier, and, under a subsequent arrangement with the consignee, the carrier picks up the property for the purpose of disposing of it through its salvage channels. The fact that a carrier may agree with a claimant to dispose of damaged property would not create liability for a claim where that liability does not otherwise exist. Such liability is determined on the basis of facts and law and these may vary with each shipment. Certainly, however, if a carrier has admitted responsibility for a claim, or the investigation of the facts surrounding the claim establishes its liability, there is no excuse for a carrier's not paying the claim promptly. There will always be a need for carriers and claimants to disclose and discuss fully the controlling facts and their intentions and views with respect to claims and salvage, especially when a carrier picks up already-delivered freight for the purpose of salvaging it.

19. *Question.* What can be done when a carrier improperly withholds salvage proceeds from the rightful owner?

Answer. It is possible that a carrier might find it unusually difficult or even impossible promptly to determine the person rightfully entitled to receive salvage proceeds. Whenever a carrier is believed to have a practice, a policy, or an attitude of wrongfully failing to transmit salvage proceeds, or the carrier transmits salvage proceeds in a dilatory or irresponsible manner, aggrieved persons, in addition to other legal remedies, may seek the assistance of this Commission which has jurisdiction over the claims-processing practices of regulated carriers.

20. *Question.* Must the notice required to be given to parties with an interest in property damaged in transit be given in any specific form, such as, for example, certified mail?

Answer. No. Due notice must be given to the owner and other interested parties (this may include connecting carriers) whenever practicable to do so, but the regulations do not specify any particular form that the notice must take. There will no doubt be many situations in which the giving of notice by telephone will better serve the interests of all concerned than the giving of

written notice. Deciding upon the form of the notice will in many instances be dictated by considerations of how best to mitigate further damages to the property and parties with an interest therein. Notice required by the claims-processing regulations, however, should not be construed as altering a carrier's duties with respect to on-hand freight. The provisions of section 4(b) of the bill of lading are not affected by section 1005.6 of the regulations.

21. *Question.* May a carrier's freight bill number serve as a salvage lot number?

Answer. Yes, but a carrier must decide initially whether it will utilize the freight bill number in that manner in *all* instances of salvage goods. It would not constitute compliance with the successive lot number requirement of the regulation for the carrier on some occasions to apply a separate salvage lot number and at other times to use the freight bill number. It is possible, for example, in the latter situation for different lots of salvage to have the same number. In the designation of lots of salvage by freight bill number, carriers that use prefix or suffix numbering or lettering codes to identify terminals or points of origin, must be certain to include those codings in the salvage lot number in order to avoid duplicate lot numbers.

22. *Question.* Must carriers keep an accurate record of every item sold through a public salvage store?

Answer. Carriers are required to make an itemized record sufficient to identify the property salvaged so as to enable them to correlate that property and the shipment or transportation involved, and any claim filed thereon. The carrier must, as noted above, assign to each lot of salvage property, a successive lot number and note that lot number on its record of shipment and claim, if any. In the disposition, for example, of a case containing 24 bottles of a given product, the regulations applicable to the disposition of salvage would not require the carrier to make a separate entry in its salvage and claim record for each of the 24 bottles as they are sold by its salvage agent. It would suffice if the carrier maintained a record of the property in a sufficiently

itemized manner so as to enable it to identify the transportation involved.

However, if salvage goods are sold by the carrier to an agent or employee of the carrier, or if such property is disposed of through a salvage agent in which a director, officer, or manager of the carrier is interested, financially or otherwise, more detailed requirements apply. In those instances the carrier's salvage records must fully reflect the particulars of each such transaction or relationship as the case may be.